71-1474

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MICHAEL RODAK, JR

IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No.

ALBERT B. EASON, ET AL.,
Petitioners,

versus

LENA VERN DANDRIDGE, ET AL.,
Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1971

No.

LENA VERN DANDRIDGE, ET AL.,
Plaintiffs-Respondents,

versus

JEFFERSON PARISH SCHOOL BOARD, ET AL.,
Defendants-Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Albert B. Eason and others, Intervenors, respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Court to review the decision of the United State Court of Appeals for the Fifth Circuit in No. 71-2542 rendered on February 11, 1972, which affirmed an earlier Judgment by the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, in civil action number 14,801, granting Respondent further relief as originally prayed for.

JURISDICTION

The Judgment of the Court of Appeals (Appendix B) was entered February 11, 1972.

Jurisdiction to review this case upon Writ of Certiorari is authorized and created by U.S.C.A. title 28, Section 1254 (1).

OPINIONS

The Order of the District Court is printed in Appendix "A"; the opinion of the Court of Appeals for the Fifth Circuit is printed in Appendix "B".

QUESTIONS PRESENTED

1. Whether 20 U.S.C.A., Section 1232a and 42 U.S.C.A., Section 2000-C-6 are applicable in furtherance of Brown 1 as cited in Swann versus Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 28 L.Ed. 2d 554 (1971).

2. The question of "de facto" segregation on a limited scale as a result of housing patterns as the sole basis for compulsory busing after a unitary system has been in operation with full cooperation of the local School Board.

3. The legality of compulsory busing where a unitary school system has achieved approximately eighty percent full integration of students and total integration of faculty, transportation, and extra curricular activities.

4. Whether the District Court properly interpreted and applied the broad provisions of Swann (supra).

STATUTES INVOLVED

Pertinent provisions of title IV of the Civil Rights Act of 1964, Section 2000C-6(a) and 20 U.S.C.A., Section 1232a.

STATEMENT OF THE CASE

Plaintiffs' original petition filed in July, 1964, sought an end to the dual school system in Jefferson Parish, including the assignment of students and faculty. A freedom of choice plan was adopted and fully implemented.

Plaintiffs sought further relief in 1968 and a unitary system was prepared and implemented by the School Board on non-racial geographical zones. The District Court adopted the School Board plan, complemented the School Board for its cooperation, and the unitary system was operationally successful.

Immediately following the Swann (supra) decision, plaintiffs sought further relief asking that every school in the Parish achieve a set 65-35 white black pupil ratio (the actual ratio was 80-20), and faculty assignments comparable to the system-wide faculty white black composition. Plaintiffs' last petition is the subject of this appeal and obviously relies on the broad language in Swann.

The District Court ordered the School Board to submit a new plan in accord with the Swann decision. An intervention was filed by Albert B. Eason and approximately fourteen thousand (14,000) parents (black and white) opposing compulsory busing of students.

In August, 1971, the District Court withdrew the freedom of choice concept and ordered a new plan which changed every School District, ordered compulsory busing beyond district lines for approximately three thousand (3,000) students, which further required transfers of approximately ten thousand (10,000) students, because of the new districts.

The District Court denied a stay order on August 13, 1971, the Fifth Circuit Court of Appeals denied a stay order on August 23, 1971, and Justice Thurgood Marshall denied a stay order on August 30, 1971.

The matter was considered by the United States Court of Appeals for the Fifth Circuit by briefs and the District Court order was affirmed on February 11, 1972.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals for the Fifth Circuit erred and misdirected itself in affirming the District Court's Order, as follows:

1. Finding "de facto" segregation because nineteen (19) out of seventy five (75) schools remained uniracial under the Court approved unitary system adopted in 1969.

2. In granting plaintiffs relief with a new school plan to achieve "racial balance" which in turn would eliminate racial identification of *any* particular school.

3. In holding that the remaining one race schools which existed under the unitary system previously approved by the District Court were discriminatory and not as a result of voluntary housing patterns in Jefferson Parish.

4. Invoking Judicial powers contrary to Congressional legislation which clearly prohibits transportation of students to overcome racial imbalance and negating any Federal authority over direction, supervision, or control concerning assignment or transportation of students in order to overcome racial imbalance.

ARGUMENT

1. Finding "de facto" segregation because nineteen (19) out of seventy five (75) schools remained uniracial under the Court approved unitary system adopted in 1969.

The main thrust of the District Court's Order was utilizing Swann (supra) to require compulsory busing beyond normal geographical zones because nineteen (19) schools out of the entire seventy five (75) school system remained uniracial. In 1969 the Jefferson Parish School Board prepared and adopted a unitary system disregarding assignment of pupils by race. The system proved highly successful and transition oc-

cured without incident. Faculties were integrated, student bus transportation was integrated, and extra curricular activities were integrated. The only reason that nineteen schools remained basically uniracial was because of housing patterns that existed long before Brown I. The patterns that developed were not within the control of the School Board at any time, but now formed the basis for the District Court to order a complete revamping of every School District, taking three thousand (3,000) children from their home schools and force busing them to distant locations. As a further result of the District Court's Order, aproximately ten thousand (10,000) students were displaced from their home schools and forced to attend new schools in new districts. All of this occured in spite of the good faith efforts of the School Board in achieving a unitary system and in fully complying with every order and request of the District Court. There is no evidence in the record which indicates that segregation or willful discrimination caused the remaining nineteen (19) schools out of seventy five (75) schools to be uniracial.

As stated by Mr. Chief Justice Burger in Swann, pp 571, "The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole." This is contrary to the District Court in its reasons for Judgment that "this new plan would achieve racial balance in every school". The District Court also directed that the School Board be guided by the principles of "racial balance". This, too, is contra to Swann.

2. In granting plaintiffs relief with a new school plan to achieve "racial balance" which in turn would eliminate racial identification of any particular school.

The Chief Justice warned that District Courts should not be misguided in their interpretation of Swann. The decision clearly provided that forced busing was not to be used in order to achieve racial balance in all schools. Busing was merely one tool to implement desegregation plans after taking into consideration other factors clearly specified in the decision. The primary objective of the long list of desegregation cases was to eliminate State imposed segregation. Under Brown I to do otherwise was contrary to the Constitution. Remedies sought would be considered by equitable principles. Remedial powers such as compulsory busing ordered by the District Court should be utilized only when there is a finding of a constitutional violation. To do otherwise would allow District Judges to assume full authority over all public schools. The record in this case clearly reflects total cooperation by the Jefferson Parish School Board, full compliance with every request and Order, and the operation of a smooth, unitary system during the past years.

Swann outlines other criteria for consideration, such as the racial composition of teachers and staff, the quality of school buildings and equipment, and extra curricular activities. The record herein is void of any racial identification in these categories.

The Constitution does not require "racial balance" in public schools. This Honorable Court has never ruled

that all black schools in all cities are unlawful. The Swann decision did not require that all School Boards bus children in furtherance of a unitary system.

3. In holding that the remaining one race schools which existed under the unitary system previously approved by the District Court were discriminatory and not as a result of voluntary housing patterns in Jefferson Parish.

As pointed out above, the School Board has absolutely no control over the development of subdivisions and the personal desires of parents to live in particular sections of Jefferson Parish. There is no evidence in the record that schools were intentionally built in particular neighborhoods in order to accommodate either white or black students. To the contrary, the building program of the School Board has consistently been nondiscriminatory and development of the home sites in the Parish were regulated by zoning ordinances and personal desires. Discrimination of any kind should not have been considered as the reason for the few remaining one race schools which existed under the unitary system adopted by the District Court in 1969. Neither the District Court nor the School Board controlled the location of homes or living habits of the parents which have existed in this area for more than one hundred (100) years.

4. Invoking Judicial powers contrary to Congressional legislation which clearly prohibits transportation of students to overcome racial imbalance and negating any Federal authority over direction, supervision, or control concern-

ing assignment or transportation of students in order to overcome racial imbalance.

The language of title IV of the Civil Rights Act of 1964, 42 U.S.C.A., Section 2000c clearly defines and limits the Federal government's participation in further implementation of Brown I. The language is clear and unmistakable, stating: "*Nothing herein shall empower any official or Court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the Court to insure compliance with the constitutional standards*".

The interpretation in Swann of this unambiguous language was clearly erroneous. Section 2000c-6 not only restricts but prohibits the assignment of students to public schools in order to overcome racial imbalance. The prohibition is clear that "*nothing herein shall empower any official or Court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance*". How could Swann conceivably interpret this language as anything but a clear limitation on unreasonable implementation by District Courts in furtherance of Brown I. In fact, Mr. Chief Justice Burger stated "In short, there is nothing in the act (Civil Rights Act) which provides us material assistance in answering the question of remedy for state imposed segregation in violation of Brown I". This being the case, the Court

ignored this legislation, created new "guidelines", and created the new monstrosity called "forced busing" where it clearly had no authority to do so.

Intervenors strongly urge that 20 U.S.C.A., Section 1232 (a) requires re-examination of Swann and reversal of the Court of Appeals decision herein. This statute "Prohibition against Federal Control of Education" provides:

> "No provision of .... the Elementary and Secondary Act of 1965 .... shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school or school system, or over the selection of library resources, text books, or other printed or published instructional materials by any educational institution or school system, *or to require the assignment or transportation of students or teachers in order to overcome racial balance.*"
> (emphasis added)

How can such clear language and intent be ignored? Will District Courts select text books, or perhaps require certain courses in the school curriculum? How far can the Courts go in derrogation of federal prohibitions?

Constant reference must be made to the Swann decision since the District Court relied exclusively upon the broad language contained therein.

The factual situation in the Charlotte-Mecklenburg area in no way resembles the Jefferson Parish system. In Charlotte the District Court found the School Board to be discriminatory; in Jefferson Parish the District Court complemented the School Board for developing and implementing plans which created a unitary system. The Charlotte School Board failed to comply with District Court Orders, and when it did so, its plans were unacceptable. The Jefferson Parish School Board, on very short notice, submitted the present plan in operation (under protest) and fully complied with every order. By contrast, the Charlotte School Board was cited for having "totally defaulted in its acknowledged duty", providing a "loaded game plan", and its failure to cooperate which required the District Court to appoint a qualified expert for assistance.

The geographical distinction between Charlotte and Jefferson Parish should also be noted. The Charlotte area is basically metropolitan with concentrated minority groups in certain areas. Jefferson Parish is strictly suburban and covers a much larger land area. For this reason a few geographical zones existed which allowed the continuance of nineteen uniracial schools. However, the record is clear that school assignments in these areas were genuinely nondiscriminatory and based upon the Court approved plan adopted in 1969.

The Swann decision noted that it is impossible to fix guidelines on a Court's powers, but there are limits

which must be recognized. The simple objective of all school litigation since Brown I is to dismantle the dual school system. This has been accomplished in Jefferson Parish.

CONCLUSION

This petition for Writ of Certiorari filed by Albert B. Eason and others, Intervenors, representing approximately fourteen thousand white and black parents, results from a lack of complete understanding of the Swann versus Charlotte-Mecklenburg Board of Education case. Many other cases have developed and will develop seeking clarification of guidelines and restrictions. It is respectfully submitted that a Writ of Certiorari should be granted to accomplish that end.

The Jefferson Parish School Board has never opposed or taken any action to retard the evolutionary process of Constitutional law requiring conversion to unitary, nonracial school systems. This is especially important today when public education has a crisis of adverse public opinion. Parents are deserting the public school system in favor of private schools. Private schools are basically segregated which in turn retards the effort to create unitary school systems.

Thousands of parents have filed this intervention because they sincerely feel that the District Court Order seriously endangers the public school system of Jefferson Parish. Further, the Order is harmful to the rights, interests, and welfare of the children involved, and will hinder rather than help achieve a unitary nonracial school system.

Future problems can be predicted from the District Court Order. Parents, their friends, associates and other people in the community who realize the injustice of compulsory busing will cause more students to abandon the public schools. This would be the basis for a new Court-Ordered forced busing program which would start a disasterous cycle with the end result even worse than pre-Brown I.

Intervenors use this illustration to argue that unreasonable means such as forced busing to reach a desirable objective can defeat that same objective. The District Court Order endangers the public education system in Jefferson Parish and is adverse to the interest of the parents and students. Therefore, intervenors pray that this Honorable Court will reevaluate the constitutional and educational considerations enunciated in Swann. It is respectfully submitted that the decision of the United States Court of Appeals for the Fifth Circuit, No. 71-2542, and the Judgment of the District Court of the United States, Eastern District of Louisiana, New Orleans Division, Civil Action Number 14801, should be reversed and that the previous Court approved plan for a unitary school system in Jefferson Parish be reinstated.

New Orleans, Louisiana, this ____ day of May, 1972.

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GEORGE R. BLUE
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New Orleans, Louisiana 70113

ATTORNEYS FOR
INTERVENORS

PROOF OF SERVICE

In furtherance of the Rules I have served 2 copies of the above and foregoing Petition for Writ of Certiorari upon all parties, by pre-paid mail, addressed to their Counsel, this ____ day of May, 1972.

DENIS A. BARRY II

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

LENA VERN DANDRIDGE

SECTION "A"

versus No. 14,801

CIVIL ACTION

JEFFERSON PARISH SCHOOL BOARD ET AL

ORDER

On May 10, 1971, plaintiffs in this action moved for further relief in their continuing effort to have a truly unitary school system established in Jefferson Parish, Louisiana. The basis of their position is that at present there remain four all-black schools[1] and fifteen all-white, or virtually all-white schools[2] in the Jeffer-

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[1]The all-black public schools and their enrollments are:
Fourth Ward Elementary School (867), Granville T. Woods Elementary School (380), Percy Julian Elementary School (580), and Washington Elementary School (607).
Another all-black school, Avondale Gardens, has been discontinued as of the close of this past school year.

[2]The all-white or substantially all white schools and their enrollments are:
John Quincy Adams Junior High School (1060), T. H. Harris Junior High School (1737), Airline Park Elementary School (915), Alice Birney Elementary School (867), Alexander Elementary School (586), George A. Cox Elementary School (957),

son Parish School System which comprises 75 schools. The relief sought is that this court direct the Jefferson Parish School Board to formulate a new desegregation plan which, through racial balance, would eliminate the racial identification of any particular school. In addition, plaintiffs ask that the faculty of each school be integrated in substantially the same ratio of white to black teachers as exists between white and black teachers throughout the school system and that the School Board henceforth hire new teachers on a non-racial basis.

In the seven years that this court has had jurisdiction over this case, several desegregation orders have been issued to the Jefferson Parish School Board and the school system has made significant accomplishments. During this period the Supreme Court has continued to rule on the meaning and implementation of the equal educational opportunity doctrine required by the Fourteenth Amendment and enunciated in Brown v. Board of Education, 347 U.S. 483 (1954).

In Green v. County School Board, 391 U.S. 430 (1968), the Supreme Court commanded school boards to form-

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J. C. Ellis Elementary School (710), Harvey Elementary School (748), Phoebe Hearst Elementary School (923), Madison Elementary School (1101), Metairie Grammar School (401), Terrytown Elementary School (892), Westgate Elementary School (693), Bissonet Plaza Elementary School (1038) and East End Elementary School (613).

The public school superintendent of Jefferson Parish stated that two other schools, John Clancy Elementary School (848) and Catherine Strehle Elementary School (956), are already scheduled to be substantially integrated in the 1971-1972 school year.

ulate desegregation plans that would realistically and effectively remove de jure school segregation. The immediacy of this command was reiterated in Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

It was not until April 20, 1971, however, that the Supreme Court specifically answered the question of what means might be constitutionally utilized "to eliminate from the public schools all vestiges of state-imposed segregation." Swann v. Charlotte-Mecklenburg Board of Education, 91 S. Ct. 1267, 1275 (1971). The evidence adduced since this case was reopened indicates that the Jefferson Parish School System served almost 63,000 pupils in 75 schools during the 1970-1971 school year. Approximately 80 percent of the pupils are white and 20 percent are black. Presently more than 25 percent of the Jefferson Parish public schools are scheduled to remain segregated or virtually segregated in the 1971-1972 school year. These 19 one race schools (four all-black and 15 all-white or virtually all-white) will encompass approximately 13,000 pupils, roughly 21 percent of the total.

While the court feels that the Parish has increasingly realized its legal duty to provide an equal educational opportunity to pupils of all races and that a spirit of cooperation has generally prevailed, the present situation must now be examined in light of *Swann*. The School Board has asserted that a unitary system has been adopted and that further relief is unwarranted because of residential patterns that would necessitate the daily busing of young children over lengthy and unsafe routes in the Parish. In the hearing and con-

ferences thus far held, however, plaintiffs have demonstrated that massive busing is not the only solution available to overcoming the vestiges of the dual school system that previously existed in Jefferson Parish. Plaintiffs have suggested rezoning the present school districts and/or pairing schools in adjacent districts where possible.

The *Swann* decision endorsed various means for the institution of a genuinely unitary system, leaving the means selected within the district judge's discretion so long as the means adopted is an effective remedy. Concerning situations where some integration has taken place but where segregated schools remain, Mr. Chief Justice Burger stated:

> "[I]t should be clear that the existence of some small number of one race, or virtually one race, schools within a district is not in and of itself the mark of a system which still practices segregation by law. The district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the e l i m i n a t i o n of one-race schools. No *per se* rule can adequately embrace all the difficulties of reconciling the competing interests involved; but in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition. Where the school

> authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominately of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part."

91 S. Ct. at 1281.

It is the view of this court that the School Board has not met its burden of justifying the continued existence of such a substantial number of one race schools. It is therefore necessary that the School Board officials of Jefferson Parish devise a remedial desegregation plan that will fully satisfy the constitutional requirements of a unitary system.

While it is the duty and responsibility of the School Board to formulate a constitutionally sound plan, the court suggests that the parties enter into cooperative consultation in order to resolve the current deficiencies as expeditiously as possible. The School Board is to be guided by the racial balance concept, but, in doing so, careful analysis should be given to the neighborhoods of each school district and every effort should be made to preserve geographic zoning criteria where there is no conflict with constitutional requirements. While busing is a permissible tool for school desegregation, and undoubtedly will be necessary to some extent, all parties have stated that there are practical limita-

tions on the extent of any additional busing which might be required. In other words this court feels that busing should be a last resort remedy.

The School Board should therefore consider the modification of existing boundaries of school zones, pairing, and, if necessary, general rezoning. In the future, it might be added, new schools should be strategically located to enhance desegregation.

IT IS THEREFORE ORDERED that the Jefferson Parish School Board, in cooperative consultation with counsel for plaintiffs, formulate a desegregation plan for the public schools of Jefferson Parish. This plan is to comport with the requirements of Swann v. Charlotte-Mecklenburg Board of Education, 91 S.Ct. 1267 (1971), and with the guidelines set forth hereinabove.

The new plan is to be submitted by the School Board to the court for approval not later than August 2, 1971, and it is to be implemented in the forthcoming (1971-1972) school year. While this may place a temporary burden on the School Board, the time for delay is past.

IT IS FURTHER ORDERED that the Jefferson Parish School Board integrate the faculty of each school so that the ratio of white to black teachers in an individual school reflects the ratio of white to black teachers in the school system as a whole.

New Orleans, Louisiana, this 9th day of July, 1971.

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UNITED STATES
DISTRICT JUDGE

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 71-2542

LENA VERN DANDRIDGE, ET AL.,
Plaintiffs-Appellees,
versus

JEFFERSON PARISH SCHOOL BOARD, ET AL.,
Defendants-Appellants.

Appeal from the United States District Court for the Eastern District of Louisiana

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(February 11, 1972)

Before GEWIN, GOLDBERG and DYER,
Circuit Judges.

GEWIN, Circuit Judge: Upon a motion for further relief by Lena Dandridge and the other members of her plaintiff class, the district court ordered the implementation of a new desegregation plan in Jefferson Parish, Louisiana. The Jefferson Parish School Board appeals from that order. We affirm.

In 1969 the district court approved a desegregation plan for Jefferson Parish. In 1971, following the decision in *Swann v. Charlotte-Mecklenburg Board of Education*,[1] plaintiffs filed a Motion for Further Relief. At that time there remained in Jefferson Parish 19 one race schools — 4 all black schools with 2.434 students or 19% of all black students, and 15 all white schools. At the beginning of the 1971-72 school year there were 75 schools and approximately 63,000 students, 80% white and 20% black. In their Motion for Further Relief the plaintiffs asked that every school be required to achieve a white-black ratio more nearly proportionate to the ratio of the entire system and that assignment of faculty members be on a ratio comparable to the system wide faculty composition.

After a hearing on plaintiffs' motion the district court ordered the Jefferson Parish School Board to submit a plan in accordance with *Swann* to be implemented in the 1971-72 school year. In compliance, the School Board submitted a plan to the court, but without recommending that it be adopted. On August 10, 1971, the district court approved the plan submitted by the school board and ordered that it be implemented. The plaintiffs are fully satisfied with the court's order. The order provides for the integration of all 19 formerly one race schools by altering boundaries for elementary and middle school attendance zones and by bussing some 3,000 students. Evidence presented at the hearing showed that the average daily roundtrip distance for the students to be bussed would be approximately 7 miles. The longest round trip distance for any child

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[1] 402 U.S. 1, 28 L.Ed.2d 554 (1971).

was shown to be 14 miles. The plan also provides for the assignment of faculty so that the racial composition of the faculty in each school will be comparable to the system wide ratio.

The School Board contends that the district court erred in requiring "forced bussing" to achieve racial balance and in concluding that the one race schools involved were "vestiges" of the previously operated dual school system rather than the product of voluntary housing patterns.

Swann made clear that bussing is an available tool for use by district courts in achieving school desegregation. In *Swann* 23,000 students were to be bussed,[2] in Jefferson Parish only 3,000; and in *Swann* the average daily round trip was 15 miles,[3] in Jefferson Parish only 7 miles. No serious argument was made or evidence presented which would support a finding that the bussing required here would adversely affect the health of the children or significantly impinge on the educational process.[4] We find no abuse of the district court's equitable discretion with respect to bussing.

Swann placed the burden on school authorities to show that one race schools are "genuinely nondiscrim-

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[2]*Id.* at ——, 28 L.Ed.2d at 574 n.11.

[3]*Id.*

[4]In memoranda submitted to this court in support of the School Board's motion for a stay pending appeal the Board claimed that the logistical problems involved in obtaining the buses necessary to implement the new plan were insurmountable. We denied the stay. The briefs on appeal add nothing to those arguments.

inatory."[5] The district court found that the only evidence presented by the School Board to justify the presence of 19 one race schools in this case "was an allusion to housing patterns." In view of the history of officially sanctioned school segregation in Jefferson Parish, the court concluded that such a bare allegation was without merit. The real thrust of the School Board's argument is a plea for neighborhood schools. But Chief Justice Burger reminded the litigants in *Swann* that, "Desegregation plans cannot be limited to the walk-in school."[6] The district court did not commit error in concluding that the School Board had not met its burden under *Swann* to show that the 19 schools were genuinely nondiscriminatory.

The district court permitted Abert B. Eason and others of his class to intervene on behalf of the School Board. Their brief on appeal raises substantially the same issues as those raised by the School Board. They emphasize that the district judge who granted the motion for further relief was the same judge who in 1969, ordered a plan implemented which he held would establish a unitary school system. Thus, Eason contends that Jefferson Parish already has a unitary school system and that no further relief is required. At the time of the 1969 order the Supreme Court had not made clear the extent of the remedial power available to district courts in dealing with the vestiges of a dual and unconstitutional school system. *Swann* has since provided additional guidance. Whether either the parties or the district court thought the Jefferson Parish

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[5] 402 U.S. at _____, 28 L.Ed.2d at 572.
[6] *Id.* at _____, 28 L.Ed.2d at 575.

system in 1969 was a unitary one is not controlling. *Swan* held that one race schools, as here, which have always been one race schools in a system with a history of segregation are suspect.[7] Seeking to justify the remaining 19 one race schools the intervenors state in their brief:

> The few remaining one-race schools exist solely because of housing patterns prevalent in Jefferson Parish for many years before Brown I was rendered.

It is unquestioned that before *Brown I* there was state imposed segregation in Jefferson Parish. As the district court noted we do not have here schools which have been desegregated and then resegregated by shifting population trends. The argument of the intervenors thus lends support to the district court's finding that the 19 one race schools are in fact "vestiges" of former school segregation.

The intevenors also suggest that 20 U.S.C.A. § 1232 a[8] (Supp. 1971) supports their position. A similar ar-

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[7] *Id.* at ——, 28 L.Ed.2d at 572.

[8] Section 1232a provides:

> No provision of the Act of September 30, 1950, Public law 874, Eighty-first Congress; the National Defense Education Act of 1958; the Act of September 23, 1950, Public Law 815, Eighty-first Congress; the Higher Education Facilities Act of 1963; the Elementary and Secondary Education Act of 1965; the Higher Education Act of 1965; the International Education Act of 1966; or the Vocational Education Act of 1963 shall be construed to authorize any department, agency, officer, or employee of the United States to

gument was made under 42 U.S.C.A. § 2000-C-6[9] and rejected in *Swann*.[10] The result we reach here is not based on § 1232(a) or on our construction of other federal statutes. As stated by the Supreme Court in *Swann:*

> The basis of our decision must be the prohibition of the Fourteenth Amendment that no State shall "deny to any person with its jurisdiction the equal protection of the laws."[11]

The order of the district court is AFFIRMED.

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exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any given educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

[9]Section 2000C-6 authorizes the Attorney General to initiate federal desegregation suits. The portion of the statute relied upon in *Swann* is found in § 2000C-6(a)(2):

> nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards.

[10]402 U.S. at ——, 28 L.Ed.2d at 567.

[11]*Id.*